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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

AMANDA L.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent,

FRESNO COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Real Party In Interest.

F043965

(Super. Ct. No. 80870)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Martin  
Suits, Judge.

Patricia L. Pinto, for Petitioner.

No appearance for Respondent.

Phillip S. Cronin, County Counsel, and Howard K. Watkins, Deputy County  
Counsel, for Real Party In Interest.

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\* Before Dibiaso, Acting P.J., Vartabedian, J., and Buckley, J.

Petitioner in pro per seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court denying her reunification services and setting a Welfare and Institutions Code section 366.26 hearing.<sup>1</sup> We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

Petitioner is the mother of G. and E., the subjects of this writ petition. She has a long history of cocaine use and drug-related criminal activity. She also has a long history of child welfare intervention beginning in May 1994 when the Fresno County Department of Children and Family Services (department) removed her four children after the youngest one of them tested positive for cocaine at birth. Petitioner gave birth to two more children, who when born tested positive for cocaine, one in March 1995 and the other in November 1996. All the while, petitioner was receiving court-ordered reunification services to attain sobriety. However, she failed to comply. She initiated but failed to complete outpatient drug treatment in 1995 and inpatient drug treatment in 1997. The juvenile court ultimately terminated reunification services for the oldest five children and denied petitioner services for the sixth child. Four were placed in guardianship, one was returned to the custody of his father and one was adopted by foster parents. According to the department, the three oldest children have refused contact with petitioner since 2000.

G. and E. came to the attention of the department in June 2003 after petitioner and newborn E. tested positive for cocaine. The department took the children into protective custody and filed a dependency petition alleging petitioner placed then 17-month-old G. and E. at risk of harm by her continued use of cocaine and that there was a substantial risk she would neglect G. and E. in the same manner she neglected their half-siblings. (§ 300, subds. (b) & (j).)

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The juvenile court detained the minors and set the jurisdictional hearing. Pursuant to the court's order, the department referred petitioner for a parenting class, a substance abuse evaluation and any recommended treatment, a mental health evaluation and any recommended treatment and random drug testing. At the jurisdictional hearing, the court found the allegations true and set the dispositional hearing for August 7, 2003. The children were placed with their maternal uncle and his wife.

In its dispositional report, the department reported that petitioner was visiting regularly with her children and participating in inpatient drug treatment at the Spirit of Women residential drug treatment program. However, the department recommended the court deny petitioner reunification services, citing her extensive and chronic use of cocaine, her failure to reunify with her children and termination of her parental rights as to the adopted child. The department acknowledged petitioner's bond with G., however, characterized petitioner's prognosis for reunification as poor. Further, the children were doing well and their uncle wanted to adopt them. Therefore, the department concluded it would be less detrimental to the children if the court denied petitioner services at the outset rather than attempt reunification and run the risk that petitioner might relapse.

Petitioner set the matter for a contested hearing which was originally scheduled for September 17, 2003. Prior to the hearing, counsel for petitioner filed a statement of issues. Attached were several letters from the Spirit of Women staff advocating reunification services for petitioner. Also attached was a copy of G.'s mental health assessment stating it would be in G.'s best interest to be placed with petitioner.

The contested dispositional hearing was continued and conducted on September 22, 2003. Petitioner appeared with counsel who made an offer of proof that petitioner enjoyed a close bond with G. and would testify that her chances of maintaining sobriety were higher through the Spirit of Women program because, unlike the other drug treatment programs, Spirit of Women provided her an individual counselor. As a result, she had increased self-awareness and was dealing with newly surfaced issues. Counsel

for petitioner submitted the matter with no further argument. The court denied petitioner reunification services pursuant to section 361.5, subdivisions (b)(10), (b)(11) and (b)(13) and set the matter for a section 366.26 hearing for January 27, 2004. Petitioner challenged the juvenile court's setting order by extraordinary writ petition and, on December 4, 2003, appeared for oral argument.

### **DISCUSSION**

As real party points out, petitioner does not challenge the evidence supporting the juvenile court's denial of services pursuant to section 361.5, subdivisions (b)(10), (b)(11) and (b)(13). Rather, she argues the court abused its discretion in not finding that reunification services would be in the children's best interest. We disagree.

Section 361.5, subdivision (c) prohibits the juvenile court from ordering reunification services for a parent described in any of certain subdivisions of section 361.5, subdivision (b), including subdivisions (b)(10), (b)(11) and (b)(13), unless the court finds by clear and convincing evidence that reunification is in the best interest of the child. The proponent carries the burden of proving by clear and convincing evidence that reunification is in the best interest of the child. (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 163-165.)

In this case, there was overwhelming evidence favoring denial of reunification services. Petitioner has a significant history of cocaine use and relapse. As a result, eight children, including G. and E., were removed from her custody. Four of those children were born drug-exposed and six of them were ordered into permanent placement. Further, it was apparent petitioner's drug use had taken a tremendous emotional toll on her children. The oldest three refused contact with her. Moreover, G. and E. were in a stable and loving home. While petitioner provided some evidence favoring reunification, i.e. her loving relationship with her children and her active participation in drug treatment, the juvenile court could legitimately have decided that evidence did not rise to clear and convincing evidence that services would be in G. and E.'s best interests.

In her petition, petitioner attempts to bolster her argument by citing *In re Michael D.* (1996) 51 Cal.App.4th 1074 (*Michael D.*), an appeal filed by the Los Angeles County Department of Children and Family Services and Michael's legal guardian from the juvenile court's order granting the section 388 petition filed by Michael's mother to modify the permanent plan of legal guardianship. (*Michael D.*, *supra*, 51 Cal.App.4th at pp. 1077-1078.) In affirming the juvenile court's order, the appellate court concluded "Michael's testimony and repeated spontaneous statements he 'wanted to live with Mommy' constituted powerful demonstrative evidence it would be in his best interest to allow him to do so." (*Id.* at p. 1087.)

Petitioner argues that, like the mother in *Michael D.*, she met her burden of showing reunification would be in the best interest of her children. She states that two-year-old G. "expresses a strong desire to be reunified" with her and cries when visitation ends. Even if we accept her assertions as true, the court's holding in *Michael D.* is inapplicable to this case. *Michael D.* was decided in the context of a section 388 petition for which the proponent must prove by a preponderance of the evidence changed circumstances or new evidence warrant modification or setting aside of a prior juvenile court order. (§ 388, subd. (a); *Michael D.*, *supra*, 51 Cal.App.4th at p. 1086.) A parent, such as petitioner, seeking to prove that reunification services would be in the best interest of her children pursuant to section 361.5, subdivision (c) bears the higher evidentiary burden of proof by clear and convincing evidence, a burden the juvenile court found she did not meet.

At oral argument, petitioner restated her position that reunification would be in the best interest of her children. She highlighted her progress in recovery at Spirit of Women which she attributed to her therapist and the support of her sponsor and case manager. She informed the court she has achieved six months of sobriety and has a part-time job waiting for her upon completion of her program. As explained to petitioner at oral argument, this court's review is confined to the evidence contained in the appellate

record. However, to the extent petitioner has new evidence or a change of circumstances that bear on her case, nothing precludes her from presenting such evidence to the juvenile court by way of a section 388 petition.<sup>2</sup> Nevertheless, on this record, we conclude the juvenile court did not abuse its discretion in finding that reunification would not be in the best interests of petitioner's children. Accordingly, we affirm the juvenile court's orders denying petitioner reunification services and setting the matter for permanency planning.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

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<sup>2</sup> Section 388 allows the parent of a child adjudged a dependent of the juvenile court to petition the court to change, modify or set aside any order upon grounds of change of circumstance or new evidence.